

November 16, 2004

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REVISED REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L02P0013**
Proposed Ordinance No. **2004-0148**

NORTHLAKE ESTATES DIVISION 2

Preliminary Plat Application

Location: South of South 328th Street between 38th Avenue South
And South Military Road

Applicant: GWC, Inc., *represented by*
James Jaeger
Jaeger Engineering
9419 South 204th Place
Kent, Washington 98031
Telephone: (253) 850-0934

King County: Department of Development and Environmental Services, *represented by*
Kim Claussen
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-7167
Facsimile: (206) 296-6728

SUMMARY OF DECISION/RECOMMENDATION:

| | |
|--|--------------------------------|
| Department's Preliminary Recommendation: | Approve, subject to conditions |
| Department's Final Recommendation: | Approve, subject to conditions |
| Examiner's Decision: | Approve, subject to conditions |

EXAMINER PROCEEDINGS:

| | |
|-----------------|----------------|
| Hearing Opened: | April 20, 2004 |
| Hearing Closed: | May 25, 2004 |

The report originally issued by the Hearing Examiner on June 11, 2004 has been revised consistent with the terms of the appeal decision adopted by the King County Council on October 11, 2004.

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. General Information:

Applicant: GWC, Inc.
Attn. Terry DeFoor
24633 NE 133rd Street
Duvall, WA 98019
(206) 999-8874

Engineer: Jim Jaeger
Jaeger Engineering
9419 South 204th Place
Kent, WA 98031
(253) 850-0934

STR: 15-21-4

Location: The site is located south of South 328th Street, between 42nd Avenue South and South Military Road

Zoning: R-4
Acreage: 8.24 acres
Number of Lots: 34 lots
Density: Approximately 4.39 units per acre
Lot Size: Ranges from approximately 4,500 to 5,000 square feet
Proposed Use: Single-family detached dwellings
Sewage Disposal: Lakehaven
Water Supply: Lakehaven
Fire District: King County District No. 39
School District: Federal Way
Complete Application Date: October 29, 2002

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's preliminary report to the King County Hearing Examiner for the April 20, 2004 public hearing are found to be correct and are incorporated herein by reference. The LUSD staff recommends approval of the application, subject to conditions.
3. On October 29, 2002 GWC, Inc. filed a preliminary plat application to subdivide 10.05 acres into 47 lots for single-family residential development. The preliminary plat application was comprised of two non-contiguous groups of parcels. The larger southern property constituted 8.24 acres and was proposed for development at 34 lots. Another 13 lots were proposed for plat development further north on two parcels located adjacent to and south of the intersection of

South 328th Street and 42nd Avenue South. These two northern parcels are themselves separated by the undeveloped right-of-way for 42nd Avenue South. The easterly of the two northern parcels is separated from the main southern complex of proposed lots by three intervening properties under unrelated ownership at a distance of about 350 feet. The westernmost of the northern two parcels lies adjacent to the northeast corner of Northlake Estates Division 1, which received preliminary approval on October 3, 2003. Northlake Estates Division 1 also lies adjacent to lot 1 and lots 26-44 along the western flank of the southern Division 2 property. The roadway for 42nd Avenue South is being constructed as a primary access to Division 1 and will serve the southern Division 2 property as well. However, the northernmost 700 feet of 42nd Avenue South has been relocated approximately 200 feet west of the original undeveloped right-of-way. The result is that the proposed northern 13 lots of Division 2 would have its own separate access to South 328th Street in the location where a private gravel road now exists. As proposed by the Applicant, the access road along the existing 42nd Avenue South right-of-way serving the northern tier lots would be barricaded against vehicle access north of the southern plat property.

4. At the public hearing held April 20, 2004 the Hearing Examiner expressed skepticism at the legality of approving within a single subdivision application lots platted within non-contiguous properties. The hearing was continued to allow the parties to brief this issue and for the preparation by the Applicant of an alternative plat map limited to the proposed lots on the southern parcel. It was understood that submission of this revised plat map limited to the southern parcel would not operate to prejudice any future appeal of the Examiner's decision not to approve within the same application the 13 lots proposed for the northern property.
5. Although not served by a common access road, the northern and southern properties proposed for development within Northlake Estates Division 2 were designed to share some facilities. Specifically, surface runoff from the northern property received a diversion variance so that it could be piped approximately 800 feet to a treatment pond located on the east side of the southern parcel adjacent to Military Road South. The Applicant also proposes to serve both northern and southern properties with a single 15,208 square foot recreation tract located at the northwest corner of the southern plat property. At such location it will be within a 300-foot walking distance of 6 lots within the southern property and 1 lot within the northern property. Overall it provides a more convenient amenity for Division 1 residents than for Division 2. As noted by neighborhood resident Peter Poorman, the proposed location of the recreation tract at the northwest corner of the southern property creates an attractive evening congregation place for teenagers from outside the neighborhood due to its isolated location and lack of road frontage visibility.
6. The main southern property is characterized by a elongated wetland on the western half of the property that extends off-site to the north. Plat drainage flows from the west into the wetland, then sheet-flows overland east to Military Road. From there it travels south and further east into the Mill Creek system. The off-site downstream drainage system for the plat will require conveyance upgrades along Military Road and is subject to level 2 release requirements in order to avoid exacerbating erosion problems downstream in Mill Creek. It is expected that some roof and yard drainage from adjacent lots will be directed to the wetland in order to maintain its hydrology.
7. The traffic mitigation measures required for Northlake Estates Division 2 largely mimic the requirements placed on Division 1, and it is anticipated that the principal road improvements will be constructed as a part of the Division 1 plat. These improvements include left and right turn lanes on Military Road at South 328th Street as well as an acceleration lane on Military Road

northbound. Nonetheless, area residents have expressed skepticism as to whether these lane improvements will provide effective mitigation during rush hour conditions when left turns from South 328th Street onto Military Road may be impeded by bumper-to-bumper traffic. According to staff, traffic warrants supporting installation of a signal at the Military Road/South 328th Street intersection have yet to be met. But the need for a signal at this location or nearby further south on Military Road appears to be an issue that will need to be addressed soon in view of the intense development activity taking place in this neighborhood. Northlake Estates Division 2 will also make a pro rata share contribution to lane and signalization improvements to relieve an Level of Service F condition at the South 320th Street/Military Road South intersection, and Division 1 will contribute to a State safety improvement project at the Weyhaeuser Way/SR 18 interchange. A LOS F condition at the South 320th Street southbound ramp to Interstate 5 also exists, but the State currently has no project to improve that facility and has requested no mitigation payments from this Applicant.

8. Neither the Applicant nor King County DDES provided detailed argument in support of their contention that non-contiguous properties may be platted within a single subdivision application. Both pointed to a few instances where this has occurred in the past and suggested that nothing within either state subdivision law or county codes specifically prohibits the practice. Ray Florent, a licensed surveyor who supervises on behalf of DDES the final platting process, testified that while no regulatory framework exists for determining when the platting within a single subdivision on non-contiguous properties is appropriate, the rule of thumb employed by DDES was that the inclusion of separate properties within a single plat is acceptable when they are close enough together that they can be linked on the final plat through common survey controls and monumentation.

CONCLUSIONS:

1. The preliminary approval conferred by this decision is limited to the 34 lots proposed on the southern 8.24 acres of the Applicant's property and is predicated on a conclusion that inclusion of non-contiguous properties into a single subdivision application is authorized neither by state law nor county codes. Turning first to the history of subdivision statutes generally, subdivision laws emerged in the 19th century in order to provide more precision to the division of large tracts of land that were typically described simply in terms of metes and bounds. See generally, *Thompson on Real Property* (2nd Thomas edition) vol. 9, section 85.11(b), page 878 (1999). As further elaborated in *Powell on Real Property*, "early subdivision regulations were intended to simply create an accurate public record of property boundaries as land was divided into small enough parcels that boundaries became particularly important". *Powell on Real Property*, vol. 12, page 9-48 (2004).

Based on historical practices, Powell offers the following general definition of the subdivision process:

"Subdivision regulations apply to the subdivision of land A straight-forward definition of the word would be the division of a tract or parcel of land into two or more lots or parcels." *Ibid*, page 9-50.

2. The Washington subdivision statute set forth in RCW Chapter 58.17 follows the historical format. RCW 58.17.020 (1) defines the term "subdivision" as the "division or redivision of land into five or more lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership . . ." The primary argument put forward for viewing this definition as authorizing

the inclusion within a single subdivision of non-contiguous parcels relies on the fact that the word “land” can be regarded as either singular or plural. The contention is that the regulatory use of the word “land” in its plural sense is a reasonable construction of an ambiguous term and thus authorizes platting non-contiguous parcels within a single subdivision application.

The problem with this argument is that any ambiguity as to whether the word “land” is intended to be used in a singular or a plural sense is clarified within the following paragraph of the statute. RCW 58.17.020 (2) defines the term “plat” as a “map or representation of a subdivision, showing thereon the division of a tract or parcel of land into lots, blocks, streets and alleys or other divisions and dedications.” Since a plat is simply the map of a subdivision, the reference in the “plat” definition to the division of a “tract or parcel” in the singular implicitly rejects any argument that the earlier use of the word “land” was intended to include its plural application. Consistent with the historic understanding, RCW Chapter 58.17 contemplates within the term “subdivision” only the division of a unitary tract or parcel of land.

3. The definition of the term “subdivision” contained within the King County Title 19A Land Segregation ordinance follows state law in defining the term as meaning “a division or redivision of land” (KCC 19A.040.320). This is not surprising because one of the stated purposes of the title is to “ensure consistency with Chapter 58.17 RCW” (KCC 19A.01.010 F). While the same argument can be made as to a possible generic use of the term “land”, the overall context of the regulations governing county subdivision practices indicates a contrary conclusion. For example, subdivision applications are required to be consistent with county zoning controls, and the fundamental regulatory term “site” is defined within the Zoning Code at KCC 28.06.1170 as “a single lot, or two or more contiguous lots that are under common ownership or documented legal control, used as a single parcel for a development proposal in order to calculate compliance with the standards and regulations of this title.” Similarly, the concept that a development site is a single entity is clearly expressed within the notice of application requirements stated at KCC 20.20.060, which apply to subdivisions. KCC 20.20.060 F. 1 provides in pertinent part as follows:

“A single notice board shall be posted for a project. This notice board shall may also be used for the posting of the notice of decision and notice of hearing shall be placed by the applicant:

- a. at the mid-point of the site frontage or as otherwise directed by the department for maximum visibility;
- b. five feet inside the street property line except when the board is structurally attached to an existing building, but a notice board shall not be placed more than five feet from the street property without approval of the Department”

Supplementing the single site and notice board terminology quoted above, subsection 2 of KCC 20.20.060 F deals specifically with circumstances in which additional notice boards may be required. These exceptions are also strictly limited to problems attendant to providing notice to a single site. If it indeed were contemplated that multiple parcels could be included in a single subdivision application, this topic would have been addressed in section 2.

4. Title 19A itself contains a number of instances which make clear that its regulatory purview is restricted to development proposals consisting of single or contiguous parcels. The graphics requirements for preliminary plat applications stated at KCC 19A.08.150 B.1 require submission of a map prepared by a surveyor which shows the “location of all physical and legal description

encroachments affecting the boundary between the application site and the adjoining parcels. Encroachments may be from the application site onto the adjoining parcels or from the adjoining parcels onto the application site.” This description is particularly compelling because it not only relates specifically to subdivision applications but also pointedly draws a distinction between the singular application site and plural adjoining parcels.

Consistent with state authorization conferred at RCW Chapter 58.17, KCC Chapter 19A.20 provides for the use of binding site plans as an “alternative method for division of land for commercial and industrial zoned property, mobile home parks, trailer parks or condominiums” (KCC 19A.20.010 A). Here we have an alternative procedure for the “division of land” that is subject to the following specific requirement pursuant to KCC 19A.20.020 B: “The site that is subject to the binding site plan shall consist of one or more contiguous lots.” Since the use of a binding site plan exists simply as a parallel method for effecting a subdivision, the specific requirement for contiguity provides relevant guidance as to the general character of the process.

5. Allowing for the inclusion of non-contiguous parcels into a single subdivision application without a supporting framework of legislative authorization also creates some difficult legal and practical problems. Most obviously, if it is acceptable to include within a single subdivision application non-contiguous properties separated by over 300 feet and 3 intervening non-related parcels, the question arises whether there can be any legally defensible spatial limits on the inclusion of non-contiguous properties into a single application. If 300 feet of separation is acceptable, why not 1,000 feet? Why not a half-mile? Why not five miles? And if two noncontiguous parcels can be conjoined in a single application, why not three? Four? Ten?

While one may argue about precisely where the line should be drawn, there is clearly a point where the distance between non-contiguous parcels becomes so great or the number of conjoined separate parcels so large that their inclusion into a single subdivision application intuitively becomes absurd. But without an adopted legislative policy to guide the process, the administrative interpretation of where that line should be drawn is almost by definition arbitrary and capricious, and arguably also a denial of equal protection of the law to whichever applicant finds him or herself just outside the informally determined boundary defining an acceptable degree of non-contiguity. With recent growth management legislation making developable urban parcels more scarce with each passing day, the time may have indeed arrived when the inclusion of non-contiguous properties into a single subdivision application has become a desirable policy goal. But such decision should be made systematically and deliberately by the legislative authority subject to clearly defined regulatory limitations on its employment, not introduced haphazardly through the back door by administrative fiat.

6. Even though it is clear under applicable state and local regulations that no legal authorization for the combination of non-contiguous parcels into a single plat application presently exists, in this instance there are extenuating circumstances that warrant permitting the original 47 lot application for Northlake Estates Division 2 to be approved. Divisions 1 and 2 are inter-related parts of a single overall development plan. They share a common access road system and are subject to the same traffic impact mitigation requirements. Both segments of the proposed Division 2 plat are connected to Division 1, so the overall development demonstrates the requisite contiguity even if the later application by itself does not. It is clear from the record that both the Applicant and DDES staff reviewed Divisions 1 and 2 as an integrated project, and the collective impacts of the two inter-related proposals were adequately addressed. Thus, although the requirement for parcel contiguity within a single plat application needs to be recognized and upheld pending future enactment of legislation authorizing departure from this principle, in this

instance withholding approval from the northern 13 lots of Northlake Estates Division 2 would serve no compelling public purpose and would impose a hardship on an applicant who has conscientiously attempted to conform to the County's review procedures. Northlake Estates Division 2 should therefore be approved as originally submitted for 47 lots.

7. Finally, at 390 square feet per lot, the recreation space requirement for a 47 lot plat totals 18,330 square feet. The 15,208 square foot tract H does not satisfy the standards stated at KCC 21A.14.180. Pedestrian trails or pathways may qualify under appropriate circumstances as recreation area only if they provide direct access to recreation facilities.
8. If approved subject to the conditions imposed below, the proposed subdivision makes appropriate provision for the public health, safety and welfare; serves the public use and interest; and meets the requirements of RCW 58.17.110.
9. The conditions of approval imposed herein, including dedications and easements, will provide improvements that promote legitimate public purposes, are necessary to serve the subdivision and are proportional to its impacts; are required to make the proposed plat reasonably compatible with the environment; and will carry out applicable state laws and regulations and the laws, policies and objectives of King County.

DECISION:

The 47 lot preliminary plat application for Northlake Estates Division 2, as revised and received on March 4, 2004, is APPROVED, subject to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19A of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density and minimum density requirements of the R-4 zone classification. All lots shall meet the minimum dimensional requirements of the R-4 zone classification or shall be as shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services. The applicant shall provide the TDR certificates prior to engineering plan approval and final plat. In the event the TDR certificate is not provided, the density/number of lots shall be decreased accordingly.
4. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
5. The applicant must obtain the approval of the King County Fire Protection Engineer for the adequacy of the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King County Code.
6. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as

shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.

- a. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
- b. Current standard plan notes and ESC notes, as established by DDES Engineering Review shall be shown on the engineering plans.
- c. The following note shall be shown on the final recorded plat:

“All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designed for individual lot infiltration systems, the systems shall be constructed at the time of building permit and shall comply with plans on file.”

7. A drainage adjustment (L03V0038) is approved for this site. All conditions of approval for this adjustment shall be met prior to engineering plan approval.
8. The stormwater detention facility shall be designed at a minimum to meet the Level 2 Flow Control and Basic Water Quality menu in the 1998 King County Surface Water Design Manual (KCSWDM).
9. The 100-year floodplain for all onsite wetlands or streams shall be shown on the engineering plans and the final recorded plat per Special Requirement #2 in the KCSWDM. An analysis shall be provided with the engineering plans for an overflow provision from the onsite wetland; an overflow provision shall be provided as needed.
10. The following road improvements are required to be constructed according to the 1993 King county Road Standards(KCRS):
 - a. Roads A and B shall be improved at a minimum to the urban subaccess street standard, with a temporary turnaround provided at the north end of Road B.
 - b. The frontage along 42nd Ave S (adjoining Lots 1 and 28 thru 34) shall be improved to the urban neighborhood collector standard, unless already constructed by others. Note that this improvement is also a requirement for Northlake Estates Div 1(L02P0001).
 - c. 42nd Ave S(from S 328th St. to the south line of Lot 35) shall be improved at a minimum to the full width urban subaccess street standard. R/W radii shall be provided at the S 328th St/ 42nd Ave S intersection. 42nd Ave S from the south line of Lot 35 to the south line of Lot 46 shall be improved at a minimum to the urban 1/2-street standard with a temporary turnaround at the south end.
 - d. The frontage along S 328th St. shall be improved at a minimum to the urban neighborhood collector street standard. The S 328th St channelization/left turn lane on S 328th St and the channelization/left turn lanes on Military Rd (engineering plan

- L04SR006 for Northlake Est. Div. 1) shall be completed with this development unless already constructed with Div. 1.
- e. The plat frontage along S. Military Road shall be improved at a minimum to the urban principal arterial street standard. A minimum 8 foot wide paved shoulder shall be provided on the west side of Military Rd between the northern property line of the southern parcel and S. 238th Street. Twenty feet of additional R/W shall be provided along the frontage. A R/W radius shall be provided at the southwest quadrant of the S 328th St/Military Road intersection.
 - f. Tracts D, E and G shall be improved as joint use driveways per Section 3.01 of the KCRS. Lots 29 thru 34 shall also be served by joint use driveways. These tracts shall be owned and maintained by the owners of the lots served. Notes to this effect shall be included on the engineering plans and the final recorded plat.
 - g. Tract F shall be improved as a private access tract per Section 2.09 of the KCRS. This tract shall be owned and maintained by the owners of the lots served. Notes to this effect shall be included on the engineering plans and the final recorded plat.
 - h. Modifications to the above road conditions may be considered according to the variance provisions in Section 1.08 of the KCRS.
11. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
 12. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
 13. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
 14. The proposed subdivision shall comply with the Sensitive Areas Code as outlined in KCC 21A.24. Permanent survey marking, and signs as specified in KCC 21A.24.160 shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.
 15. Preliminary plat review has identified the following specific sensitive areas requirements which apply to this project. All other applicable requirements from KCC 21A.24 shall also be addressed by the applicant.

Wetlands

- a. Class 2 wetland(s) shall have a minimum buffer of 50 feet, measured from the wetland

edge.

- b. The wetland(s) and their respective buffers shall be placed in a Sensitive Area Tract (SAT).
- c. Buffer averaging may be proposed, pursuant to KCC 21A.24.320, provided the total amount of the buffer area is not reduced and better resource protection is achieved, subject to review and approval by a DDES Senior Ecologist.
- d. A minimum building setback line of 15 feet shall be required from the edge of the tract.

Alterations to Streams or Wetlands

- e. If alterations of streams and/or wetlands are approved in conformance with KCC 21A.24, then a detailed plan to mitigate for impacts from that alteration will be required to be reviewed and approved along with the plat engineering plans. A performance bond or other financial guarantee will be required at the time of plan approval, to guarantee that the mitigation measures are installed according to the plan. Once the mitigation work is completed to a DDES Senior Ecologist's satisfaction, the performance bond may be replaced by a maintenance bond for the remainder of the five-year monitoring period to guarantee the success of the mitigation. The applicant shall be responsible for the installation, maintenance and monitoring of any approved mitigation. The mitigation plan must be installed prior to final inspection of the plat.

16. The following note shall be shown on the final engineering plan and recorded plat:

RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE AREAS AND BUFFERS

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

17. Suitable recreation space consisting of 18,330 square feet shall be provided consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190 (i.e., sport court[s], children's play

- equipment, picnic table[s], benches, etc.). Trails or pathways shall not be credited toward recreation space requirements unless they provide direct access to recreation facilities.
- a. A detailed recreation space plan (i.e., area calculations, dimensions, landscape specs, equipment specs, etc.) shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of the engineering plans. At a minimum, all equipment must at a minimum meet Consumer Project Safety Standards. Also,
 - b. Low fencing and landscaping is required along the western perimeter of Tract H to prevent conflicts between recreation space users and vehicular traffic.
 - c. A paved walkway shall be provided from 42nd Ave S. sidewalk improvements to the recreation tract
 - d. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
18. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation, open space and/or sensitive area tract(s).
19. Street trees shall be provided as follows (per KCRS 5.03 and KCC 21A.16.050):
- a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along all roads. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
 - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
 - c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
 - d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the County has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.
 - e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
 - f. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
 - g. The applicant shall contact Metro Service Planning at 684-1622 to determine if Military is on a bus route. If Military is a bus route, the street tree plan shall also be reviewed by

Metro.

- h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.
- 20. The following conditions have been established under SEPA authority as necessary requirements to mitigate the adverse environmental impacts of this development. The applicant shall demonstrate compliance with these items prior to final approval:
 - a. A 4-foot high split rail fence and signs shall be located along the outer boundary of the wetland buffers (i.e. Sensitive Area Tracts). The fencing and sign details shall be shown on the final engineering plans. Sensitive area signs shall be installed on the fence at 100-foot intervals or as appropriate. The fencing and signs shall be maintained by the abutting lot owners and/or Homeowner's Association as identified on the face of the final plat.
 - b. Prior to final plat approval, the applicant shall pay King County Dept. of Transportation (KCDOT) a pro-rata share of the cost of improvements under Countywide Capital Improvement Project No. C74312. The amount of this pro-rata payment shall be \$1134.00 which is based upon Northlake Estates Div. 1 project's calculated 0.7% share of the traffic volumes at South 320th Street/Military Road South intersection at full build out and KCDOT's estimated cost of \$162,000 for such project. Countywide improvement project C74312 will provide for a) upgrading the traffic signal system to full quad/eight phase operation and b) extension of the southbound left turn lane at the north leg of the intersection of South 320th Street and Military Road South. (King County Comprehensive Plan Policies T-215, T-303, T-305, T-306, T-307, T-309)
- 21. An easement for public use shall be provided over the pedestrian access tract. This shall be shown on the engineering plans and final plat. This tract shall be owned and maintained by the HOA.
- 22. The location of existing wells and associated well radii, if any, on tax lot 154 shall be shown on the engineering plans and final plat. This may result in the reconfiguration and/or loss of lots.
- 23. The following modifications shown on exhibit 25 shall be incorporated into the plat design:
 - a. The reconfiguration of lot 7 to provide direct access to tax lot 154 from road A; and
 - b. The relocation of the pedestrian access tract to the northern side of lot 18.

ORDERED this 16th day of November, 2004.

Stafford L. Smith

King County Hearing Examiner

TRANSMITTED this 16th day of November, 2004, to the following parties and interested persons of record:

Clark Casperson
P.O. Box 2521
Auburn WA 98071

Robert Castona
PO Box 2727
Belfair WA 98528

Terry DeFoor
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MS KCC-CC-1025

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MS OAK-DE-0100

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MS OAK-DE-0100

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MS OAK-DE-0100

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MS OAK-DE-0100

Kevin Wright
Prosecuting Atty's Office
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MS KCC-PA-0550

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before November 30, 2004***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before December 7, 2004***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE APRIL 20 AND MAY 25, 2004, PUBLIC HEARINGS ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L02P0013.

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearings were Kim Claussen, Bruce Whittaker, Ray Florent and Kristin Langley, representing the Department; and James Jaeger, representing the Applicant; and Martha Hawley, Gerald Marie, Peter Poorman and Robert Castona.

The following exhibits were offered and entered into the record on April 20, 2004:

- Exhibit No. 1 DDES file no. L02P0013
- Exhibit No. 2 DDES preliminary report for the April 20, 2004 hearing
- Exhibit No. 3 Application for land use permits dated June 21, 2002
- Exhibit No. 4 Environmental checklist dated June 21, 2002
- Exhibit No. 5 SEPA Mitigated Determination of Non-significance dated March 19, 2004
- Exhibit No. 6 Affidavit of posting indicating a posting date of February 20, 2004, and DDES receipt on March 5, 2004
- Exhibit No. 7 Plat map (revised), received March 4, 2004
- Exhibit No. 8 GIS neighborhood map
- Exhibit No. 9 Assessors maps (4), NW/SW/NE/SE 15-21-04
- Exhibit No. 10 Level I Drainage Analysis by Jaeger Engineering received June 21, 2002
- Exhibit No. 11 Wetland Evaluation & Delineation, Wildlife Habitat Evaluation and Buffer Establishment Plan by Habitat Technologies, dated March 1, 2003
- Exhibit No. 12 Traffic Impact Analysis by Gibson Traffic Consultants, dated April, 2002
- Exhibit No. 13 City of Federal Way letters: a) 10/14/03 and b) 08/01/02
- Exhibit No. 14 Memo from Gibson Traffic Consultants dated 3/17/03
- Exhibit No. 15 Letters from Peter Poorman: a) received 4/02/04 and b) dated 11/30/02
- Exhibit No. 16 Letter from Richard & Martha Hawley dated January 30, 2003

- Exhibit No. 17 Conceptual drainage plan received 03/03/03
- Exhibit No. 18 Conceptual intersection plan received 03/03/03
- Exhibit No. 19 Conceptual recreation space plan received 03/03/03
- Exhibit No. 20 KC SWDM adjustment request for file no. L03V0038, dated 11/06/03
- Exhibit No. 21 Road variance L02V0071 for file no. L02P0001, dated 04/21/03
- Exhibit No. 22 Additional conditions of plat approval nos. 21 and 22

The following exhibits were offered and entered into the record on May 25, 2004:

- Exhibit No. 23 Letter to the Hearing Examiner from James Handmacher dated May 3, 2004
- Exhibit No. 24 Memorandum to the Hearing Examiner from Joe Miles dated May 4, 2004
- Exhibit No. 25 Plat Map Revision
- Exhibit No. 26 Statement from Ray Florent
- Exhibit No. 27 Revised recommendations from DDES

SLS:gao
L02P0013 RPT2